A **DURABLE PORTFOLIO SDN BHD & ANOR v. PANG KEE HWI REALTY SDN BHD & ORS AND ANOTHER APPEAL**

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
MOHD ZAWAWI SALLEH JCA
B UMI KALTHUM JCA
[CIVIL APPEALS NO: J-02-1670-07-2013 & J-02-1831-08-2013]
24 NOVEMBER 2014

C ***COMPANY LAW:*** *Shares – Transfer of shares – Transfer by way of gift to existing member – Whether prima facie right for shareholder to freely transfer shares – Whether wrongful and ineffective pursuant to memorandum and articles of association – Whether there was general compulsion to make general offer to all existing members – Whether transfer of shares null and void*

D The first defendant company was set up by one late Dato' Pang Kee Hwi for the benefit of his wife *ie*, the second defendant and his children. By notice dated 11 March 2013 from the company secretary ('the third defendant'), the directors of the first defendant were informed that the second defendant had requested for the registration of the transfer of her 299,202 shares in the company in favour of Wong Lan & Daughters Sdn Bhd. The plaintiffs E objected to the proposed transfer for non-compliance with art. 37 of the Articles of Association, in particular sub-cls. (b) and (c), which required the second defendant to make a general offer to existing shareholders on a *pro rata* basis. On 12 March 2013, the third defendant confirmed that the second defendant had executed a share transfer form in favour of the proposed F transferee, and had also deposited the relevant share certificates with him, in purported compliance with art. 37. The plaintiffs filed originating summons and prayed for, *inter alia*, (i) a declaration that the proposed transfer was wrongful and ineffective pursuant to the memorandum and articles of association of the first defendant ('prayer (a)') and (ii) a declaration that any G transfer of the shares held by the second defendant in the first defendant company to Wong Lan & Daughters Sdn Bhd was wrongful, ineffective, null and void ('prayer (b)'). The Judicial Commissioner ('JC') granted prayers (a) and (b), but refused the other prayers in the originating summons. The plaintiffs appealed against the part of the decision of the High Court in refusing to order the second defendant to offer her shares to all other H shareholders on a *pro rata* basis ('Appeal 1670'). The defendants appealed against the decision of the JC in granting prayers (a) and (b) ('Appeal 1831'). The two appeals were heard together. The issue for determination was whether the JC was correct in granting prayers (a) and (b) of the originating summons.

I

Held (allowing Appeal 1831; dismissing Appeal 1670)
Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) A basic feature of registered companies is that their shares are freely transferable, and there is no power to refuse registration of a transfer unless the company's constitution gives a clear power to do so. There is a *prima facie* right for a shareholder to freely transfer his shares, which can only be altered by clear provisions to the contrary in the Articles of Association of the company. A restriction on transfer must therefore be clearly expressed in the Articles of Association of the company, and it will not be implied by the courts. (para 15)

(2) Article 37(b) contains an express prohibition against transfer of shares to persons who are non-members of the company; it could not be said that the prohibition extended to transfer between members. Such interpretation would tantamount to giving sub-cl. (b) a meaning wider than it would ordinarily bear. The provision is precise, plain and simple and there is no ambiguity in it. The court was not at liberty to re-draft the provision either by substituting, adding or altering the words used in the Articles of Association. (para 17)

(3) Article 37(c) lays down directions as to the form of the sale notice and for ascertaining the fair value of shares which is referred to in art. 37(b). It followed that under the provisions of art. 37(b), where a share is desired to be transferred to one who is not a member of the company, the member entitled to transfer, must, as a first step, make a general offer to the other shareholders in the form of a sale notice pursuant to art. 37(c). As the second defendant was purported to transfer her shares to an existing member, the pre-emptive requirement could not be triggered. (para 21)

(4) There was reference to a 'sale' of shares in art. 37(c). A member is required to give a sale notice to the company that he desires to sell the same. The notice should also include the number of shares the retiring member desires to sell. As a matter of contractual interpretation, sub-cl. (c) was meant to apply in the context of sales of shares. The purported transfer was by way of gift. Therefore, it was not caught by art. 37(c). Thus, Appeal 1831 was allowed. (para 24)

(5) By virtue of the words "any member or any person selected by the directors" in art. 37, there was no compulsion to make a general offer to all existing members. The option to purchase shares from a retiring member at fair value is not accorded to all members, but to those selected by the directors. Therefore, Appeal 1670 must fail. (para 27)

Bahasa Malaysia *Translation of Headnotes*

Syarikat defendan pertama telah ditubuhkan oleh Dato' Pang Kee Hwi yang telah meninggal dunia untuk kepentingan isterinya iaitu defendan kedua dan anak-anaknya. Melalui notis bertarikh 11 Mac 2013 daripada setiausaha syarikat ('defendan ketiga'), pengarah-pengarah defendan pertama telah dimaklumkan bahawa defendan kedua telah membuat permintaan agar 299,202 saham-saham miliknya dalam syarikat didaftarkan memihak kepada Wong Lan & Daughters Sdn Bhd. Plaintif-plaintif membantah cadangan pemindahan atas ketidakpatuhan per. 37 Perkara-Perkara Persatuan Syarikat, khususnya sub-kl. (b) dan (c), yang memerlukan defendan kedua membuat tawaran awam kepada pemegang saham sedia ada secara *pro rata*. Pada 12 Mac 2013, defendan ketiga mengesahkan bahawa defendan kedua telah menandatangani borang pemindahan saham memihak kepada penerima pemindahan yang dicadangkan, dan telah juga mendepositkan sijil saham yang berkaitan dengannya, sebagai pematuhan yang dimaksudkan per. 37. Plaintif-plaintif memfailkan saman pemula dan memohon, antara lain, (i) satu pengisytiharan bahawa pemindahan yang dicadangkan adalah salah dan tidak efektif menurut memorandum dan perkara-perkara persatuan syarikat defendan pertama ('tuntutan (a)') dan (ii) satu pengisytiharan bahawa apa-apa pemindahan saham yang dipegang oleh defendan kedua dalam syarikat defendan pertama kepada Wong Lan & Daughters Sdn Bhd adalah salah, tidak efektif, tak sah dan terbatal ('tuntutan (b)'). Pesuruhjaya Kehakiman ('PK') telah membenarkan tuntutan (a) dan (b), tetapi menolak tuntutan-tuntutan lain dalam saman pemula itu. Perayu-perayu merayu terhadap sebahagian keputusan Mahkamah Tinggi kerana enggan memerintahkan perayu kedua menawarkan saham-saham miliknya kepada pemegang-pemegang saham yang lain atas dasar *pro rata* ('Rayuan 1670'). Defendan-defendan merayu terhadap keputusan PK kerana telah membenarkan tuntutan (a) dan (b) ('Rayuan 1831'). Kedua-dua rayuan didengar bersama. Isu untuk diputuskan adalah sama ada PK betul dalam membenarkan tuntutan (a) dan (b) saman pemula itu.

Diputuskan (membenarkan Rayuan 1831; menolak Rayuan 1670):
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

(1) Satu ciri asas syarikat berdaftar adalah bahawa saham-saham mereka boleh dipindahmilik dengan bebas, dan tiada kuasa untuk menolak pendaftaran pemindahan melainkan perlembagaan syarikat memberikan kuasa yang jelas untuk berbuat demikian. Terdapat hak *prima facie* bagi pemegang saham untuk membuat pemindahan dengan bebasnya, yang hanya boleh diubah oleh peruntukan jelas yang berlawanan dengan Perkara-Perkara Persatuan Syarikat. Satu sekatan pada pemindahan dengan itu harus dinyatakan dengan jelas dalam Perkara-Perkara Persatuan Syarikat, dan ia tidak akan disiratkan oleh mahkamah.

(2) Perkara 37(b) mengandungi satu larangan jelas terhadap pemindahan saham kepada mereka yang bukan ahli syarikat; ia tidak boleh dikatakan bahawa larangan itu diperluaskan kepada pemindahan antara ahli-ahli. Tafsiran sedemikian sama seperti memberikan sub-kl. (b) makna yang lebih luas daripada apa yang biasa ditanggung olehnya. Peruntukan adalah tepat, mudah dan jelas dan tidak terdapat kekaburan. Mahkamah tidak mempunyai kebebasan untuk mendrafkan semula peruntukan melalui penggantian, pemindaan atau pengubahan perkataan-perkataan yang digunakan dalam Perkara-Perkara Persatuan Syarikat.

(3) Perkara 37(c) membentangkan arahan-arahan bagi bentuk notis jualan dan untuk menentukan nilai saksama saham yang dirujuk dalam per. 37(b). Mengikut peruntukan-peruntukan per. 37(b), di mana satu saham diminta dipindahmilik ke seseorang yang bukan ahli syarikat, ahli yang berhak untuk membuat pemindahan, harus, pada langkah pertama, membuat tawaran secara am kepada pemegang-pemegang saham yang lain dalam bentuk notis jualan mengikut per. 37(c). Oleh kerana defendan kedua bermaksud untuk memindahkan saham-sahamnya kepada seorang ahli, keperluan terdahulu tersebut tidak boleh dicetuskan.

(4) Terdapat rujukan kepada 'jualan' saham dalam per. 37(c). Seorang ahli diperlukan untuk memberikan notis jualan kepada syarikat yang dia ingin menjualnya. Notis juga sepatutnya merangkumi jumlah saham ahli-ahli yang bersara ingin jual. Sebagai perkara tafsiran kontraktual, sub-kl. (c) adalah dimaksudkan untuk memohon dalam konteks jualan saham. Pemindahan yang dimaksudkan di sini adalah melalui hadiah. Oleh itu, ia tidak terperangkap oleh per. 37(c). Oleh itu, Rayuan 1831 dibenarkan.

(5) Memandangkan perkataan "mana-mana ahli atau mana-mana orang yang dipilih oleh pengarah-pengarah" yang terdapat dalam per. 37, tiada kewajipan untuk membuat tawaran am kepada semua ahli-ahli yang sedia ada. Opsyen untuk membeli saham dari ahli bersara pada nilai yang saksama tidak dibenarkan kepada semua ahli, tetapi hanya pada mereka yang dipilih oleh pengarah-pengarah. Oleh itu, Rayuan 1670 harus gagal.

Case(s) referred to:

Greenhalgh v. Malland and Others [1943] 2 All ER 234 ***(refd)***

Loh Eng Leong & Ors v. Loh Mu Sen & Sons Sdn Bhd & Anor [2002] 2 CLJ 184 CA ***(dist)***

Ord v. Calan Healthcare Properties Ltd [2005] 2 NZLR 96 ***(refd)***

Other source(s) referred to:

Robert R Pennington, *Company Law (Butterworth's)* 8th edn, 2001, p. 402

(Civil Appeal No: J-02-1670-07-2013)

For the appellants - Gopal Sri Ram (Lua Ai Siew, Chang Tau Sian & Razinah Shaheed Ali with him); M/s Henry Soong & Chang

For the respondent - KS Pang; M/s KS Pang & Co

(Civil Appeal No: J-02-1831-08-2013)
For the appellants - KS Pang; M/s KS Pang & Co
For the respondent - Gopal Sri Ram (Lua Ai Siew, Chang Tau Sian & Razinah Shaheed Ali with him); M/s Henry Soong & Chang

[Editor's note: For the High Court judgment, please see Durable Portfolio Sdn Bhd & Anor v. Pang Kee Hwi Realty Sdn Bhd & Ors [2013] 1 LNS 929.]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Zawawi Salleh JCA:

The Antecedents

[1] For ease of reference, we will refer to the parties in this appeal as they stood in the High Court.

[2] This appeal concerns the construction of Articles of Association of the company, in particular, the scope of such articles in giving preemption rights to shareholders in the event that a member wishes to transfer his shares to an existing member.

[3] On 21 March 2013, the plaintiffs applied to the High Court by way of an originating summons for the following reliefs:

(a) A declaration that the proposed transfer of the 299,202 shares held by the second defendant in the first defendant company to one Wong Lan & Daughters Sdn Bhd is wrongful and ineffective pursuant to the Memorandum and Articles of Association of the first defendant;

(b) A declaration that any transfer of the 299,202 shares held by the second defendant in the first defendant company to one Wong Lan & Daughters Sdn Bhd is wrongful, ineffective, null and void;

(c) An injunction to prevent the transfer of 299,202 shares held by the second defendant in the first defendant company to one Wong Lan & Daughters Sdn Bhd until further order;

(d) In the alternative, in the event that the transfer of the 299,202 shares held by the second defendant shall have been effected as at the hearing date of the application or at any other future date to one Wong Lan & Daughters Sdn Bhd, then such transfer be declared null and void and entirely invalid; and

(e) An order for the 299,202 shares held by the second defendant in the first defendant company be offered by way of pro rata to all shareholders of the first defendant (save for the second defendant) in accordance with the percentage of shares owned by the shareholders in the first defendant based on the fair value price as defined under art. 37 of the first defendant's article of association.

[4] On 17 July 2013, the learned Judicial Commissioner granted prayers (a) and (b) above, but refused the other prayers in the originating summons. The plaintiffs appealed against the part of the decision of the High Court in refusing the other prayers, in particular, prayer (e). The plaintiffs' appeal was registered as J-02-1670-07/2013 ('Appeal No. 1670'). The defendants' appealed against the decision of the learned Judicial Commissioner in granting prayers (a) and (b). The defendants' appeal was registered as J-02-1831-08/2013 ('Appeal No. 1831'). Both appeals were heard together.

[5] At the conclusion of the hearing, we dismissed the Appeal No. 1670 and allowed the Appeal No. 1831. We now give our reasons for doing so.

The Facts

[6] The facts in a nutshell are that the first defendant company was set up by one late Dato' Pang Kee Hwi for the benefit of his wife ie, the second defendant and his children. The second defendant held 299,202 shares (26.67%). The first and second plaintiffs, together with one Ultimate Conglomerate Sdn Bhd, each held 238,000 shares (21.21%) for three of Dato' Pang's son. Another company, Wong Lan and Daughters Sdn Bhd, held 108,800 shares (9.7%) for eight of Dato' Pang's daughters.

[7] By notice dated 11 March 2013 from the third defendant, who was the company secretary, the directors of the first defendant were informed that the second defendant had requested for the registration of the transfer of her 299,202 shares in the company in favour of Wong Lan and Daughters Sdn Bhd. A circular resolution of the board of directors was also attached to the said notice for approval by the directors.

[8] *Vide* letter dated 11 March 2013, the plaintiffs objected to the proposed transfer for non-compliance with art. 37 of the Articles of Association, in particular sub-cls. (b) and (c), which required the second defendant to make a general offer to existing shareholders on a *pro rata* basis. The relevant sub-clauses are in the following terms:

> 37. Subject to these Articles, any member may transfer all or any of his shares, but every transfer must be in writing, and in the usual common form or in such other form as the directors may approve, and must be left at the Office accompanied by the certificate of the shares to be transferred, and such other evidence (if any) as the Directors may require to prove the title of the intending transferor.
>
> (a) …
>
> (b) Save as herein otherwise provided, no share shall be transferred to any person who is not a member of the Company so long as any member or any person selected by the Directors as one whom it is desirable in the interests of the Company to admit to membership is willing to purchase the same at the fair value, which shall be determined as hereinafter provided.

A (c) In order to ascertain whether any member or person selected as aforesaid is willing to purchase a share at the fair value, the person, whether a member of the Company or not proposing to transfer the same (hereinafter called 'the retiring member') shall give a notice in writing (hereinafter referred as a 'sale notice') to the Company that he desires to sell the name. Every sale notice shall specify the
B denoting numbers of the shares which the retiring member desires to sell, and shall constitute the Company the agent of the retiring member for the sale of such shares to any member of the Company at the fair value. No sale notice shall be withdrawn except with the sanction of the Directors.

C (d) …

[9] *Vide* letter dated 12 March 2013, the 3rd defendant confirmed that the second defendant had executed a share transfer form in favour of the proposed transferee, and had also deposited the relevant share certificates with him, in purported compliance with art. 37 of the Articles of
D Association.

[10] The plaintiffs then filed originating summons and prayed for the declaratory reliefs as alluded to above.

Appeal No. 1831

E **[11]** The issue for determination in this appeal was whether the learned Judicial Commissioner was right in granting prayers (a) and (b) of the originating summons.

[12] The learned Judicial Commissioner held that art. 37 of the Articles of Association applied to the purported transfer from the second defendant to
F the intended transferee. In reaching his decision, His Lordship found support in the case of *Loh Eng Leong & Ors v. Loh Mu Sen & Sons Sdn Bhd & Anor* [2002] 2 MLJ 253 (*Loh Eng Leong* case), a decision of this Court. In *Loh Eng Leong* case, appellants were the first respondent company. They applied to the High Court, *inter alia*, to rectify the register of the company by striking
G out the name of the second respondent as the holder of 161 shares in the company. They contended that the transfer of the shares to the second respondent by another member of the company was done without prior notice to the company pursuant to art. 21(b) of the company's Articles of Association. Article 21 of the Company's Articles of Association reads as
H follows:

21. The right of members to transfer their shares shall be restricted as follows:

(a) A share may be transferred by a member or other person entitled to transfer to any member selected by the transferor; but save as
I aforesaid, and save as provided by sub-cl (f) and (g) hereof, no share shall be transferred to a person who is not a member so long as any

member or any person selected by the directors as one whom it is desirable in the interests of the company to admit membership, is willing to purchase the same at fair value.

b) Except where the transfer is made pursuant to sub-cl (f) and (g) hereof, the person proposing to transfer any share ('the proposing transferor') shall give notice in writing to the company ('transfer notice') that he desires to transfer the same. Such notice shall specify the sum he fixes as the fair value, and shall constitute the company his agent for the sale to any member of the company (or person selected as aforesaid) willing to purchase the same ("the purchasing member") at the price so fixed, or, at the option of the purchasing member, at the fair value to be fixed in accordance with sub-cl (d) hereof. A transfer notice may include several shares, and in such case shall operate as if it were a separate notice in respect of each. A transfer notice shall not be revocable except with the consent of the directors.

[12] The learned trial judge in that case held that the provisions of art. 21(b) were ambiguous, thereby dismissing the application. In allowing the appeal, this court held that art. 21 applied to all transfers, be it to a member or a non-member of the company. The court had this to say at p. 260:

> At first blush, this submission by the learned counsel for the respondents appear to have great force. However, going back to the provisions of art. 21 of the AA, looking at it as a whole, we find that the submission so made lacks any merit. The whole of the said art. 21 concerns the restriction imposed upon any transfer of shares in a private limited company such as that of the first respondent company. *The whole idea behind such a restriction was to enable the members of such private limited company to have a priority to buy shares in the company in the event that another member intends to sell his shares in it, be it to another member or otherwise.* … Therefore it is safe to assume that the maker of the AA of the first respondent company intends that the shareholders therein be protected in that any change in the structure of the shareholding by the disposal of the shares of any member, be it to another member or otherwise as permitted by law, must be with the knowledge of the other existing members, through a transfer notice given to the company, thereby giving them the option to purchase at fair value before the shares go out of his hand. (emphasis added).

[13] Analysing the general tone of the learned Judicial Commissioner's decision, it would appear that His Lordship had adopted a liberal interpretation in holding that the pre-emptive requirement on transfer of shares imposed by art. 37(b) should be construed to mean all transfers, be it from a member to another member, or from a member to a non-member. As the second defendant had not complied with the condition precedents of art. 37(b), the purported transfer from the second defendant to Wong Lan & Daughters Sdn Bhd was null and void.

[14] Learned counsel for the defendant had criticised the liberal interpretation adopted by the learned Judicial Commissioner and submitted that it was the wrong approach. He developed his submission by reference to the decision of English Court of Appeal in *Greenhalgh v. Malland and others* [1943] 2 All ER 234 where Lord Greene MR enunciated the following principle:

> Questions of construction of this kind are always difficult, but in the case of the restriction of transfer of shares I think it is right for the court to remember that a share, being personal property, is *prima facie* transferable, although the conditions of the transfer are to be found in the terms laid down in the articles. If the right of transfer, which is inherent in property of this kind, is to be taken away or cut down, it seems to me that it should be done by language of sufficient clarity to make it apparent that that was the intention.

[15] We agreed with learned counsel for the defendant's submission. In our view, a basic feature of registered companies is that their shares are freely transferable, and there is no power to refuse registration of a transfer unless the company's constitution gives a clear power to do so. In other words, there is a *prima facie* right for a shareholder to freely transfer his shares, which can only be altered by clear provisions to the contrary in the articles of association of the company. A restriction on transfer must therefore be clearly expressed in the articles of association of the company, and it will not be implied by the courts.

[16] Any limitation on the right of transfer must be strictly construed. As Robert R Pennington, *Company Law* (Butterworth's, 8th edn. 2001) states in relation to restrictions on the transferability of shares contained in a company's memorandum or articles of association at p. 402:

> The court interpret restrictions on transferability strictly, and if there is an ambiguity or uncertainty, inclines to the interpretation which will give the shareholder the greatest freedom to transfer.

[17] Bearing the above principles in mind, we proceeded to consider the sub-clauses in the present case. Article 37(b) contains an express prohibition against transfers of shares to persons who are non-members of the company. On a plain reading of art. 37(b), it could not be said that the prohibition extended to transfer between members. Such interpretation would tantamount to giving sub-cl. (b) a meaning wider than it would ordinarily bear. The provision is precise, plain and simple and there is no ambiguity in it. The court was not at liberty to re-draft the provision either by substituting, adding or altering the words used in the Articles of Association. In our considered view, if at all the maker of the articles had intended to cut down the right to transfer shares from a member to another member of the company, it would have inserted clear words to that effect.

[18] Further, art. 37(c) begins with language which is qualified in its application. The opening words in art. 37(c) states "in order *to* ascertain whether any member or person selected as aforesaid is willing to purchase a share at the fair value". These words told us that sub-cl. (c) was indeed a mechanism for ascertaining the fair value of shares referred to in sub-cl. (b). If that mechanism prescribed in sub-cl. (c) was of general application to cover all transfers, it would render the words "to a person who is not a member" in sub-cl. (b) redundant.

[19] With respect, we were of the considered view that the learned Judicial Commissioner had erred in construing the pre-emption clauses in the present case in the same manner as in *Loh Eng Leong* case. Although *Loh Eng Leong* case and the current case both concern pre-emption clauses, they were drafted in a completely different way.

[20] This court in *Loh Eng Leong* case was not making an immutable statement of the law on the interpretation of pre-emption clauses. As observed by Abdul Kadir Sulaiman JCA (as he then was), in light of the words "the person proposing to transfer any shares" in art. 21(b), the pre-emptive requirement was automatic, except for transfer made pursuant to art. 21(g) ie, transfer from a deceased member to his executors or administrators; or transfer made pursuant to art. 21(h) when the directors refused to register the proposed transfer. Further, the phrase "no share shall be transferred to a person who is not a member so long as any member or any person selected by the directors as one whom it is desirable in the interests of the company to admit to membership" in art. 21(a) can stand on its own and did not in any way narrow the effect of art. 21(b). His Lordship also stated that there might be a different consideration if the transfer made pursuant to art. 21(a) was also included in art. 21(b).

[21] As stated earlier, in the present case, art. 37(c) lays down directions as to the form of the sale notice and for ascertaining the fair value of shares which is referred to in art. 37(b). This in itself called for a different consideration from *Loh Eng Leong* case. It followed that under the provisions of art. 37(b), where a share is desired to be transferred to one who is not a member of the company, the member entitled to transfer,must, as a first step, make a general offer to the other shareholders in the form of a sale notice pursuant to art. 37(c). As the second defendant was purported to transfer her shares to an existing member, the pre-emptive requirement could not be triggered.

[22] In our view, the pre-emptive requirement in the present case was meant to apply in the context of sales of the shares only. We referred to a New Zealand case, *Ord v. Calan Healthcare Properties Ltd* [2005] 2 NZLR 96 *(Ord)*. In *Ord*, the appellant held the beneficial interest in shares in the respondent company, and the said shares were held on trust for the appellant by one Mr Akehurst. The appellant sought to transfer the legal title in the

A shares from Mr Akehurst to the new trustee. The question before the court was whether or not the pre-emption clauses applied. The clause reads as follows:

> 8.4 A shareholder intending to transfer any shares ('the Transferor') must give a transfer notice in writing to the Board. The transfer notice shall
B state the number, class and asking price of the shares to be offered for sale. The transfer notice shall constitute the Board the Transferor's agent (to the exclusion of the Transferor) for the sale of the shares.

[23] The New Zealand Court of Appeal interpreted the above pre-emption clause and held that:

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> The paradigm case envisaged by cl 8.4 involves a sale. Clause 8.4 makes this clear by reference to the words "asking price of the shares to be offered for sale" and the constitution of the board as the transferor's agent "for the sale of the shares'". The stipulation of an asking price is very significant.

D **[24]** In the present case, there was reference to a 'sale' of shares in art. 37(c). A member is required to give a sale notice to the company that he desires to sell the same. The notice should also include the number of shares the retiring member desires to sell. As a matter of contractual interpretation, sub-cl. (c) was meant to apply in the context of sales of shares.
E The purported transfer was by way of gift. Therefore, it was not caught by art. 37(c).

[25] The facts in *Loh Eng Leong* case was different from the case before us as the transfer of shares was by way of sale. We, therefore, found that *Loh Eng Leong* case was distinguishable from the case at hand and did not assist
F the plaintiff.

Appeal No. 1670

[26] The plaintiffs appealed against the part of the decision of the learned Judicial Commissioner in refusing to order the second defendant to offer her
G shares to all other shareholders on a *pro rata* basis.

[27] Our short answer to this appeal was this. By virtue of the words "any member or any person selected by the directors" in art. 37, there is no compulsion to make a general offer to all existing members. The option to purchase shares from a retiring member at fair value is not accorded to all
H members, but to those selected by the directors.

[28] Therefore, Appeal No. 1670, must fail.

Conclusion

[29] In view of what had been stated above, Appeal No. 1831 was allowed
I and Appeal No. 1670 is dismissed with agreed costs of RM10,000. Deposits in both appeals were refunded.